

**Effective 5/10/2016**

## **Part 5**

### **Rehabilitation and Liquidation**

#### **31A-44-501 Application for court order for rehabilitation or liquidation.**

- (1) The department may request that the attorney general petition a district court in the state, or a federal bankruptcy court that has exercised jurisdiction over a provider's facility, for an order that appoints a trustee to rehabilitate or liquidate the facility if:
  - (a) the department determines that:
    - (i) the provider is financially unsound or is unable to meet the income or available cash projections described in the provider's disclosure statement; and
    - (ii) the provider's ability to fully perform the provider's obligations under a continuing care contract is endangered; or
  - (b) the provider is bankrupt, insolvent, or has filed for protection from creditors under a federal or state reorganization, bankruptcy, or insolvency law.
- (2) A court that evaluates a petition filed under Subsection (1) regarding a provider:
  - (a) shall evaluate the best interests of a person that has contracted with the provider; and
  - (b) may require the proceeds of a lien imposed under Section 31A-44-601 to be used to pay an entrance fee to another facility on behalf of a resident of the provider's facility.

Enacted by Chapter 270, 2016 General Session

#### **31A-44-502 Order to rehabilitate .**

- (1) A court order to rehabilitate a facility under Section 31A-44-501 may direct a trustee to:
  - (a) take possession of the provider's property in order to conduct the provider's business, including employing any manager or agent that the trustee considers necessary; and
  - (b) take action as directed by the court to eliminate the causes and conditions that made rehabilitation necessary, which action may include:
    - (i) selling the facility through bankruptcy or receivership proceedings; and
    - (ii) requiring a purchaser of the facility to honor any continuing care contract for the facility.
- (2)
  - (a) For a facility subject to a ground lease, a court may, in addition to the actions described in Subsection (1), direct a trustee to purchase from the ground lessor, or assign to another person that agrees to operate the facility, for market value, the ground lessor's interest in the land and the infrastructure improvements to the land on which the facility is located.
  - (b) A court may direct a trustee under Subsection (2)(a) to purchase from a ground lessor the land and infrastructure improvements to the land on which a facility is located, regardless of the terms of the ground lease agreement.
  - (c) If a court directs a trustee to purchase or assign the land and infrastructure improvements to the land under Subsection (2)(a), the ground lessor shall sell or assign the land and infrastructure improvements to the land in compliance with the court order.
  - (d) The commissioner shall determine market value in accordance with rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (e) In determining market value under Subsection (2)(d), the commissioner shall:
    - (i) value the land and infrastructure improvements to the land on which the facility is located as though the land and infrastructure improvements to the land were not subject to the ground lease; and

- (ii) disregard the monetized value of an existing ground lease.
- (3) Solely for the purpose of enforcing this section, a court has personal jurisdiction in a proceeding under this section over:
  - (a) the owner of a facility; and
  - (b) the owner of the land and infrastructure improvements to the land on which a facility is located.

Amended by Chapter 8, 2016 Special Session 3

**31A-44-503 Order to liquidate .**

- (1) If the trustee determines that further efforts to rehabilitate a provider's facility are impractical or useless, the trustee may petition a court for liquidation of the facility.
- (2) A court that issues an order to liquidate a facility under Subsection (1) shall appoint a trustee to collect and liquidate all of the provider's assets located in this state.
- (3) An individual may not enter into a continuing care contract at a facility after a court enters an order to liquidate the facility.
- (4)
  - (a) For a facility subject to a ground lease, a court may, in an order to liquidate under this section, direct a trustee to purchase from the ground lessor, or assign to another person that agrees to operate the facility, for market value, the ground lessor's interest in the land and the infrastructure improvements to the land on which the facility is located.
  - (b) A court may direct a trustee under Subsection (4)(a) to purchase from a ground lessor the land and infrastructure improvements to the land on which a facility is located, regardless of the terms of the ground lease agreement.
  - (c) If a court directs a trustee to purchase or assign land and infrastructure improvements to the land under Subsection (4)(a), the ground lessor shall sell or assign the land and infrastructure improvements to the land in compliance with the court order.
  - (d) The commissioner shall determine market value in accordance with rules made by the commissioner in accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
  - (e) In determining market value under Subsection (4)(d), the commissioner shall:
    - (i) value the land and infrastructure improvements to the land on which the facility is located as though the land and infrastructure improvements to the land were not subject to the ground lease; and
    - (ii) disregard the monetized value of an existing ground lease.
- (5) Solely for the purpose of enforcing this section, a court has personal jurisdiction in a proceeding under this section over:
  - (a) the owner of a facility; and
  - (b) the owner of the land and infrastructure improvements to the land on which a facility is located.

Amended by Chapter 8, 2016 Special Session 3

**31A-44-504 Bond.**

A court may refuse to make or vacate an order to rehabilitate a provider's facility under this part if the provider posts a bond that is:

- (1) in an amount that the court determines is equal to the reserve funding the provider needs to fulfill the provider's obligations under all of the continuing care contracts for the facility;
- (2) issued by a recognized surety authorized to do business in the state; and

- (3) executed in favor of the state on behalf of any individual entitled to an entrance fee refund or other damages from the provider.

Enacted by Chapter 270, 2016 General Session

**31A-44-505 Termination of rehabilitation.**

- (1) A court may terminate a rehabilitation of a provider's facility and order the return of the facility and the facility's assets to the provider if the court determines:
  - (a) the objectives of the order to rehabilitate the facility have been accomplished; and
  - (b) the facility may be returned to the provider without further jeopardy to the facility's residents, creditors, or owners, or the public.
- (2) A court may enter an order under this section after the court enters:
  - (a) a full report and accounting of the conduct of the facility's affairs during the rehabilitation; and
  - (b) a report on the facility's financial condition.

Enacted by Chapter 270, 2016 General Session

**31A-44-506 Payment of trustee.**

A trustee's reasonable costs, expenses, and fees are payable from a provider's or facility's assets.

Enacted by Chapter 270, 2016 General Session